

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES CARL KELLY,  
Plaintiff,  
v.  
T. ALLEN, et al.,  
Defendants.

Case No. [23-cv-00966-JST](#)

**ORDER DENYING REQUEST FOR  
RECONSIDERATION OF DENIAL OF  
IN FORMA PAUPERIS STATUS;  
DISMISSING ACTION FOR FAILURE  
TO PAY FILING FEE IN FULL**

Re: ECF Nos. 10, 11, 12

Plaintiff filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. For the reasons set forth below, the Court DENIES Plaintiff's request for reconsideration of the Court's denial of *in forma pauperis* status, ECF No. 10; DISMISSES this action for failure to pay the filing fee; and DENIES the remaining motions as moot.

**DISCUSSION**

On or about March 3, 2023, Plaintiff commenced this action by filing a complaint against various Salinas Valley State Prison correctional officials, regarding events that allegedly took place in 2021 and 2022. *See generally* ECF No. 1. On April 13, 2023, the Court ordered Plaintiff to show cause why he should not be denied leave to proceed *in forma pauperis* pursuant to the three-strikes provision set forth in 28 U.S.C. § 1915. ECF No. 5. The Court found that Plaintiff has had at least three cases dismissed as either frivolous, malicious, or for failure to state a claim, and that he had not plausibly alleged that he was in imminent danger of serious physical injury at the time he commenced this action. ECF No. 5 at 2-3.<sup>1</sup> In response, Plaintiff filed three

<sup>1</sup> Plaintiff has filed at least fourteen civil rights in this district and has also filed a number of cases in the Eastern District of California. Plaintiff has been denied leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(g) in at least ten cases in this district. *See* ECF No. 5 at 1-2 (listing cases).

pleadings: ECF Nos. 6, 7, 8. In these pleadings, Plaintiff requested camera footage, an extension of time to respond to the Order to Show Cause, and guidance on how to respond to court orders; alleged that his case was meritorious because he had been successful in prior cases; reiterated that he lacked funds to pay the filing fee; and requested appointment of counsel. ECF Nos. 6, 7, 8. On May 25, 2023, the Court denied Plaintiff leave to proceed *in forma pauperis* pursuant to the three-strikes provision set forth in 28 U.S.C. § 1915, because Plaintiff had suffered three strikes within the meaning of Section 1915 and Plaintiff had not plausibly alleged that he was in imminent danger of serious physical injury at the time he commenced this action. ECF No. 9. The Court ordered Plaintiff to pay the \$402 filing and administrative fee in full by June 22, 2023, or face dismissal of this action. *Id.*

#### **I. Motion for Reconsideration**

Plaintiff has filed a pleading titled, “Objections,” which the Court construes as a motion for reconsideration of the Court’s denial of *in forma pauperis* status. ECF No. 10. However, the motion alleges only that the Court misidentified the case cited in Plaintiff’s pleading ECF No. 7, incorrectly listing the case as 2:08-cv-ct-01823 CTF when the correct case number is as 2:08-cv-ct-01823 CTB; that he is still requesting the video camera footage from July 23, 2022; that he requests appointment of counsel prior to appealing this case; that this action was filed on or about February 27, 2023; and that he recently filed a state habeas petition regarding incidents at California State Prison Sacramento. ECF No. 10. Because none of these allegations and requests satisfy the requirements for reconsideration, Plaintiff’s motion for reconsideration is denied. Plaintiff has not challenged the Court’s conclusions that he has suffered three strikes within the meaning of Section 1915 and has not plausibly alleged that he was in imminent danger of serious physical injury at the time he commenced this action.

#### **II. Dismissal of Action for Failure to Pay Filing Fee in Full**

The deadline to pay the filing fee in full has passed, and Plaintiff has not paid the filing fee. The Court therefore DISMISSES this action for failure to pay the filing fee in full. This dismissal is without prejudice to filing a request to reopen, but any request to reopen must be accompanied by the full filing and administrative fees.

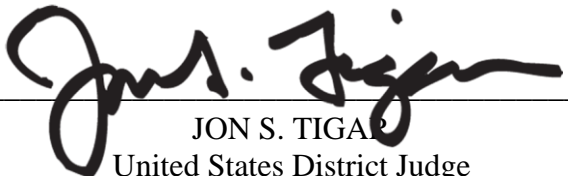
**CONCLUSION**

For the reasons set forth above, Plaintiff's motion for reconsideration, ECF No. 10, is DENIED, and this action is DISMISSED without prejudice for failure to pay the filing fee in full. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff, terminate all pending motions as moot, and close the case.

This order terminates ECF Nos. 10, 11, 12.

**IT IS SO ORDERED.**

Dated: August 2, 2023

  
JON S. TIGARD  
United States District Judge